UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

ADAM DEVELOPERS ENTERPRISES INC.

Debtor

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Chapter 11
Case No.: 1-16-43823 (CEC)

VERIFIED COMPLAINT

ADAM DEVELOPERS ENTERPRISES INC.,

Plaintiff,

ADV. PRO. NO. ______________

-against-

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION,

Defendant.

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Plaintiff ADAM DEVELOPERS ENTERPRISES INC. complaining of the Defendant by their attorneys Law Offices of Gabriel Del Virginia respectfully alleges as follows, that:

1. At all times hereinafter mentioned, ADAM DEVELOPERS ENTERPRISES INC. ("ADE", "Plaintiff" or "Debtor") is a corporation organized and operating under the laws of the State of New York with offices located within the Eastern District of New York.

2. Upon information and belief, at all times hereinafter mentioned, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION ("PARKS") is an agency of New York State, a municipality with offices located in the Eastern District of New York, Albany, NY12238.

3. That the United States District Court for the Eastern District of New York has jurisdiction over the parties, pursuant to Title 28 of the United States Code § 1334 which provides the District Court with original jurisdiction of all civil actions arising under the Title 11 of the United States Code – Bankruptcy Code.

4. That the United States District Court for the Eastern District of New York has venue pursuant to 28 U.S.C. §1391(b), 28 U.S.C. § 1391(c) and 28 U.S.C. § 1391(c) as the Debtor's principal place of business is located within the Eastern District of New York.

5. On August 24, 2016, Plaintiff Debtor filed a voluntary petition for relief under Chapter 11, Title 11, United States Code, 11 U.S.C. § 101 et. seq. (the "Bankruptcy Code").

6. The Debtor has continued in the possession and management of its properties and affairs pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. The Debtor is a general construction contractor who has a construction contract with New York State Office of Parks, Recreation and Historic Preservation, Contract Number D004589 (the "Contract") for work at Roberto Clemente State Park Upper Plaza Reconstruction, located in 301 West Tremont Avenue, Bronx, NY 10453, New York (the "Project"). The contract was awarded to Adam Developers Enterprises Inc on or about August 25, 2015 in the amount of $6,241,370.00.

8. On or about August 23, 2016, PARKS sent a Notice of Default to ADE ("Notice of Default").

9. At no time has PARKS terminated the Contract.

10. PARKS wrongfully claimed in its Notice of Default that ADE failed to supervise the work of subcontractors or employ proper means and methods to complete the work

for the Contract in a manner consistent with the approved drawings and specifications as the basis of default.

11. ADE has at all times while working under the Contract on the Project properly supervising the work on the Project. And ADE responded and disputed with full back up documentation to this wrongful declaration of default in their letter dated August 23, 2016 which no response received from PARKS to date.

12. ADE has at all times while working under the Contract on the Project proceeded with and installed work in a manner consistent with the approved drawings and specifications that were not affected by changes in scope caused by errors and omissions on by PARKS' Architect/Engineer of Record (RBA Group) which resulted in an extensive increase in costs and delays in the project schedule. At the time of issuance of wrongful declaration of default on August 23, 2016, there was no open non conformance report (NCR); and ADE submitted delay claim on March 25, 2016 to all these design and delay issues.

13. Errors and omissions by PARKS' Architect/Engineer of Record (RBA Group) for the Project resulted in delays and extensive increase in costs for the work on the Project.

14. PARKS made multiple changes to the Staging, Maintenance and Protection of Traffic ("MPT") plans for the Project which caused significant delays and increases in the scope of the Structural Steel work for the Project. The drawings for the MPT Plans was revised on 6 different occasions; the last revision was done in June 2016 almost 2 month prior to the issuance of wrongful declaration of default on August 23, 2016. (MPT Plans are the first step to establish temporary construction fencing, temporary staging area and temporary utilities to start the work project. No work can start without receiving a final approved MPT Plans from the PARKS and Architect/Engineer of Record (RBA Group).

15. PARKS made multiple changes to the Staging, Maintenance and Protection of Traffic ("MPT") plans for the Project which caused significant time delays for the completion of the Contract for the Project.

16. PARKS made multiple changes to the Staging, Maintenance and Protection of Traffic ("MPT") plans for the Project which caused significant cost increases for the work, labor and services under the Contract for the Project.

17. PARKS and Architect/Engineer of Record (RBA Group) made significant changes and revisions to the original contract drawings. They issue multiple observation reports with new drawings resulting ADE delays to submit and approve structural steel shop drawings. Also delays to fabricate and deliver the structural steel on site. It is also to be noted that it resulted in the increase of cost and delays beyond ADE control.

18. In or about December 2015, the existing structural steel on the Project was exposed for view.

19. In or about December 2015, PARKS' structural engineer for the Project, Silman Engineering, visited the site to review the condition of the existing steel.

20. In or about December 2015, it was determined that the condition of the existing steel was in such poor condition that PARKS' structural engineer for the Project, Silman Engineering needed to make three visits to the site and issue three reports documenting poor existing steel conditions and proposing an increase in the scope of work to the existing structural steel.

21. In or about December 2015, it was determined that the condition of the existing steel was in such poor condition that PARKS' structural engineer for the Project, Silman Engineering needed to make three visits to the site and issue three reports documenting poor

existing steel conditions and proposing an increase in the scope of work to the existing structural steel causing delay in the production, delivery and installation of the structural steel for the Project.

22. In or about December 2015, it was determined that the condition of the existing steel was in such poor condition that PARKS' structural engineer for the Project, Silman Engineering needed to make three visits to the site and issue three reports documenting poor existing steel conditions and proposing an increase in the scope of work to the existing structural steel causing delays and increased costs for the Project. To date there are still structural steel design errors unresolved which required significant redesigning and additional cost.

23. In or about May 2016, PARKS' structural engineer for the Project, Silman Engineering issued a final report so that ADE could then prepare shop drawings for the structural steel work for the Project and so that production of the structural steel could commence. It is to be noted that on or about one week prior to issuance of wrongful declaration of default issued on August 23, 2016, almost 75% of the structural steel fabricated was delivered on site which is to date stored on site in ADE designated area.

24. PARKS' and Architect/Engineer of Record (RBA Group) caused a delay from in or about December 2015 through May 2016 due to PARKS' failure to discover the poor condition of the existing steel at the Project prior to requesting bids from contractors for the Project.

25. PARKS' was negligent in its due diligence in its failure to discover the poor condition of the existing steel at the Project prior to requesting bids from contractors for the Project.

26. PARKS' was negligent in its due diligence in its failure to discover the poor condition of the existing steel at the Project prior to executing the Contract for the Project with ADE.

27. PARKS and his employee acted in bad faith by creating a hostile environment though their prejudice statements and actions against ADE and their employees/ subcontractors so as to create an environment designed to cause ADE to fail in the execution of the work. Which caused ADE to file a formal complaint on August 24, 2016 against PARKS Employee, Mr. Stephen McCorkell, RLA, Capital Facilities Manager, New York City Region; which is unanswered to date.

28. ADE also file a formal complaint against Mr. David Logsdon, Project Superintendent from LiRo Group who is the construction manager on this project for his actions in bad faith by creating a hostile environment though their prejudice statements and actions against ADE and their employees/ subcontractors so as to create an environment designed to cause ADE to fail in the execution of the work. Mr. Logsdon formal complaint was file on August 24, 2016 attention to Mr. Luis M. Tormenta, CEO of LiRo Group.

29. ADE is owned by a minority individual.

30. ADE is and at all times relevant to this action a New York City and New York State certified minority business enterprise (MBE).

31. PARKS employee and independent construction manager, LiRo Group representative discriminated and act in bad faith against ADE.

32. PARKS employee and independent construction manager, LiRo Group representative discriminated against ADE's principal.

33. PARKS employee and independent construction manager, LiRo Group representative discriminated against ADE's shareholder.

34. PARKS employee and independent construction manager, LiRo Group representative acted in a wrongful manner against ADE.

35. PARKS employee, independent construction manager, LiRo Group representative acted with misconduct against ADE.

36. PARKS employee, independent construction manager, LiRo Group representative acted with malfeasance against ADE.

37. PARKS employees, independent contractors and representative acted in an unethical behavior manner against ADE.

38. PARKS employee, independent construction manager, LiRo Group representative discriminated against ADE.

39. PARKS' agents and/or representative, its construction manager, LiRo Group acted in bad faith by creating a hostile environment though their prejudice statements and actions against ADE and their employees/ their subcontractors so as to create an environment designed to ClADE to fail in the execution of the work.

40. The Notice of Default was issued in bad faith.

41. The Notice of Default was issued without validity.

42. The Notice of Default was issued improperly.

43. The Notice of Default was not issued in accordance with the Contracts' terms.

44. ADE submitted to PARKS Payment Application # 1 through Payment Application # 6 which were all accepted, approved and paid by PARKS.

45. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 1.

46. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 2.

47. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 3.

48. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 4.

49. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 5.

50. ADE performed accordance with the Contract as evidenced by PARKS' payment to ADE of Payment Application # 6.

51. ADE performed all of the work in accordance with the specifications and drawings provided to ADE by PARKS.

52. Shortly prior to the date of the Notice of Declaration, ADE delivered approximately 75% of the furnished and fabricated structural steel members for the Project which consists of approximately 65% of the scope of work for the Project.

53. PARKS prevented ADE from performing work on the Project.

54. PARKS locked out ADE from the Project.

55. PARKS locked out ADE's subcontractors from the Project.

56. PARKS locked out ADE's suppliers from the Project.

57. PARKS interfered with ADE's performance of work on the Project.

58. PARKS tortuously interfered with ADE's contracts with its subcontractors.

59. PARKS failed to provide proper notice to ADE of any deficiencies in ADE's performance of its work in accordance with the terms and conditions of the Contract.

60. PARKS improperly prevented ADE from completing its work under the terms and conditions of the Contract.

61. PARKS failed to follow proper procedures to claim a default under the Contract.

62. PARKS' actions have caused damage to ADE.

63. PARKS' actions have caused damage to ADE's subcontractors.

64. PARKS' actions have caused damage to ADE's suppliers.

65. PARKS' actions have caused damage to ADE's creditors.

66. The building plans for the Project were and are defective.

67. The specifications for the Project were and are defective.

68. PARKS agents, representatives, employees and/or independent construction manager, issued revisions to the plans and/or specifications for the Project including changes to the Temporary Egress Plan for the Project.

69. PARKS agents, representatives, employees and/or independent construction manager issued revisions to the plans and/or specifications for the Project including changes to the Masonry Wall Firestopping for the Project.

70. PARKS agents, representatives, employees and/or independent construction manager issued revisions to the plans and/or specifications for the Project including changes to the Additional Egress Door in Fire Rated Partition for the Project not included in the original contract scope of work. ADE submitted cost proposal for this extra work and to date, has not been approve.

71. PARKS agents, representatives, employees and/or independent construction manager issued revisions to the plans and/or specifications for the Project including changes to the New Roberto Clemente Colonnade Figure for the Project.

72. PARKS agents, representatives, employees and/or independent construction manager issued revisions to the plans and/or specifications for the Project including changes to the Revised Colonnade Layout Plan for the Project.

73. PARKS agents, representatives, employees and/or independent construction manager issued revisions to the plans and/or specifications for the Project including changes to the New Concrete Masonry Unit Veneer at Existing North Abutment Wall for the Project.

74. Due to errors and/or omissions in the plans and specifications for the Project, ADE made approximately sixty seven (67) Requests for Information from PARKS for the Project.

75. Numerous Requests for Information from ADE to park PARKS for the Project remain unanswered.

76. Requests for Information from ADE to park PARKS for the Project were disregarded by PARKS.

77. PARKS, its agents, representatives, employees and/or independent contractors refused to issue change orders for increases in the Contract sum for changes made to the plans and specifications by PARKS, its agents, representatives, employees and/or independent contractors.

78. PARKS, its agents, representatives, employees and/or independent contractors refused to compensate ADE for changes made to the Project by PARKS, its agents, representatives, employees and/or independent contractors.

79. At all times relevant to this action, ADE had a qualified and competent full time job superintendent working on the Project who was approved by PARKS' construction manager.

80. At all times relevant to this action, ADE had a qualified and competent full time project manager working on the Project who was approved by PARKS' construction manager.

81. Meeting minutes of job meetings for the Project did not reflect PARKS' objections to ADE's project supervision of the Project.

82. Meeting minutes of job meetings for the Project did not reflect PARKS' objections to ADE's means and methods of work for the Project.

83. Prior to the Notice of Default, PARKS issued a pencil copy of the latest payment application by ADE reflecting that PARKS was satisfied with the performance by ADE under the Contract.

84. There were no outstanding or open non-compliance reports issued against ADE by PARKS at the time that PARKS issued the Notice of Default.

85. Project daily reports, daily sign in sheets and daily email communication with the PARKS' construction manager demonstrated that ADE managed the Project in accordance with the terms and conditions of the Contract.

86. PARKS' approved ADE'S Payment Application # 7 approximately one day prior to PARKS issuing the Notice of Default.

AS AND FOR A FIRST CLAIM FOR RELIEF
for Breach of Contract

87. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered "1" through "88" as if the same were set forth fully and in their entirety herein.

88. PARKS and ADE had a contract with each other, to wit: the Contract.

89. ADE performed all of its obligations in accordance with the terms and conditions of the Contract.

90. PARKS breached the Contract by failing to promptly pay to ADE for all work, labor and services provided to PARKS by ADE in accordance with the Contract.

91. ADE suffered measurable damages as a result of the breach of contract by PARKS.

92. ADE submitted the proper documentation to PARKS for the Contract and more than thirty (30) days had elapsed and PARKS had failed to remit payment to ADE for work, labor and services provided by ADE to PARKS.

93. PARKS breached its contract with ADE by failing to timely remit payment to ADE for the work, labor and services completed by ADE.

94. ADE has been damaged by PARKS and is entitled to payment from PARKS for all work, labor and services completed by ADE under the Contract.

95. ADE has been damaged by PARKS and is entitled to payment from PARKS for all additional work, labor and services completed by ADE under the Contract.

96. ADE has been damaged by PARKS and is entitled to payment from PARKS for lost profit under the Contract.

97. ADE has been damaged by PARKS and is entitled to payment from PARKS for direct damages under the Contract.

98. ADE has been damaged by PARKS and is entitled to payment from PARKS for consequential damages under the Contract.

99. ADE has been damaged by PARKS and is entitled to payment from PARKS for overhead costs under the Contract.

100. ADE has been damaged by PARKS and is entitled to payment from PARKS for general condition costs under the Contract.

101. By reason of the foregoing, ADE has been damaged in an amount to be determined at trial but anticipated to be no less than $4,000,000.00 plus interest, costs, disbursements and attorneys' fees.

AS AND FOR A SECOND CLAIM FOR RELIEF
AGAINST DEFENDANT
For Work, Labor and Services

102. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered "1" through "103" as if the same were set forth fully and in their entirety herein.

103. On or about August 25, 2015 PARKS requested that Plaintiff perform services for and on behalf of PARKS, to wit: construction work at the Project.

104. Plaintiff had performed all work that was requested by PARKS.

105. Defendant agreed to pay to Plaintiff the sum of $6,241,370.00 (contract amount) for the work, labor and services to be performed by ADE. In addition to contract amount, approved and unapproved extra work not included in the original contract including delay claim damages.

106. ADE performed work, labor and services totaling no less than $2,575,089.09 at the special instance and request of PARKS.

107. To date, the sum of $1,360,076.90 has been paid by Defendant PARKS to ADE and the balance of the Contract sum plus additional work charges ("Balance Due") remains due to Plaintiff and unpaid.

108. By reason of the foregoing, ADE has been damaged in an amount to be determined at trial but anticipated to be no less than $4,000,000.00 plus interest, costs, disbursements and attorneys' fees.

AS AND FOR A THIRD CLAIM FOR RELIEF
AGAINST DEFENDANT PARKS
For reasonable costs as a result of the
Delays by PARKS and PARKS preventing ADE from completing its Contract

109. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered "1" through "110" as if the same were set forth fully and in their entirety herein.

110. In accordance with the provisions of the contract between PARKS and ADE, ADE is entitled to paid for all reasonable direct costs incurred in the performance of work under the Contract plus reasonable overhead and profit with respect to the Contract.

111. The total amount of direct costs actually incurred by ADE and reasonable overhead and profit with respect to the work pursuant to the Contract an amount to be determined at trial but anticipated to be no less than $4,000,000.00 plus interest, costs, disbursements and attorneys fees.

112. By reason of the foregoing, ADE has been damaged in an amount to be determined at trial but anticipated to be no less than $4,000,000.00 plus interest, costs, disbursements and attorneys' fees.

AS AND FOR A FOURTH CLAIM FOR RELIEF
AGAINST DEFENDANT PARKS
For lost profits

113. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered "1" through "114" as if the same were set forth fully and in their entirety herein.

114. As a result of PARKS's breach of contract, due to the gross negligence of PARKS and the employees of PARKS, ADE is entitled to be compensated for anticipated lost profits.

115. As a result of PARKS's breach of contract, due to the bad faith of PARKS and the employees of PARKS, ADE is entitled to be compensated for anticipated lost profits.

116. As a result of PARKS's breach of contract, due to the malicious intent and willful intent to cause harm to ADE of PARKS and the employees of PARKS, ADE is entitled to be compensated for anticipated lost profits.

117. By reason of the foregoing, ADE has been damaged in an amount to be determined at trial but anticipated to be no less than $4,000,000.00 plus interest, costs, disbursements and attorneys' fees.

AS AND FOR A FIFTH CLAIM FOR RELIEF
AGAINST DEFENDANT PARKS
For expenses as a result of the bankruptcy

118. Plaintiff repeats and realleges each and every allegation stated and contained in the paragraphs of the complaint marked and numbered "1" through "119" as if the same were set forth fully and in their entirety herein.

119. ADE filed for bankruptcy protection because it expended funds on behalf of PARKS, and PARKS refused to compensate ADE for the work, labor and services provided by ADE in the time provisions as required by and set forth in the Contract.

120. ADE expended funds on behalf of its Contract with PARKS for the Project and ADE provided services under the Contract for which PARKS failed to compensate ADE.

121. ADE has been damaged because PARKS has refused to pay ADE for work, labor and services completed by ADE on the Project, and PARKS has retained monies due to ADE without justification.

122. PARKS has refused to make payments to ADE for completed work, labor and services, for which it is respectfully requested that this Court find that PARKS's actions have been in bad faith and PARKS should be compelled to reimburse to ADE and the surety companies and creditors of ADE for all of the costs incurred as a result of ADE's filing for Chapter 11 protection in an amount to be determined at trial but anticipated to be no less than $200,000.00 plus interest, costs, disbursements and attorneys' fees.

123. PARKS's actions have not only harmed the debtor ADE, but they have harmed all of the creditors of ADE.

124. By reason of the foregoing, ADE has been damaged in an amount to be determined at trial but anticipated to be no less than $250,000.00 plus interest, costs, disbursements and attorneys' fees.

WHEREFORE, the ADAM DEVELOPERS ENTERPRISES INC. demands judgment against Defendant NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION as follows:

a. On the First Claim for Relief in an amount to be determined at trial but anticipated to be no les than $4,000,000.00 plus interest, costs, disbursements and attorneys fees;

b. On the Second Claim for Relief in an amount to be determined at trial but anticipated to be no les than $4,000,000.00 plus interest, costs, disbursements and attorneys fees;

c. On the Third Claim for Relief in an amount to be determined at trial but anticipated to be no les than $4,000,000.00 plus interest, costs, disbursements and attorneys fees;

d. On the Fourth Claim for Relief in an amount to be determined at trial but anticipated to be no les than $4,000,000.00 plus interest, costs, disbursements and attorneys fees;

e. On the Fifth Claim for Relief in an amount to be determined at trial but anticipated to be no les than $250,000.00 plus interest, costs, disbursements and attorneys fees;

f. Plus any further relief as this court deems just and proper.

Dated: Great Neck, New York
November 17, 2016

Gabriel Del Virginia____________
Gabriel Del Virginia, Esq.
LAW OFFICES OF GABRIEL DEL VIRGINIA
Attorneys for
ADAM DEVELOPERS ENTERPRISES INC.
Plaintiff/ Debtor and Debtor-in-Possession
30 Wall Street-12thFloor,
New York, New York 10005
Telephone: 212-371-5478

Verification by Officer of Corporation

IQBAL AHMAD, being duly sworn, deposes and says:

That he is the PRESIDENT of ADAM DEVELOPERS ENTERPRISES INC.., the Plaintiff in the above entitled action; that he has read the foregoing Complaint, and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

DATED: Floral Park, New York
November 18, 2016

/s/ Iqbal Ahmad______________________
IQBAL AHMAD

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
--x

In re:

ADAM DEVELOPERS ENTERPRISES INC.

Debtor

--x
ADAM DEVELOPERS ENTERPRISES INC.,

Plaintiff, ADV. PRO. NO. ______________

-against-

NEW YORK STATE OFFICE OF PARKS, RECREATION
AND HISTORIC PRESERVATION,

Defendant.

SUMMONS AND COMPLAINT
ADVERSARY PROCEEDING

SIGNATURE (RULE 130-1.1a)

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Gabriel Del Virginia, Esq.

LAW OFFICES OF GABRIEL DEL VIRGINIA
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